

## **Appendix A**

### **Business Subsidy Policy and Criteria For JOBZ Development**

**Preamble.** Whenever the City of Hawley invests public funds or agrees to voluntarily forfeit tax or other revenue that benefit private development projects in a Job Opportunity Building Zone (JOBZ), those projects should create the greatest number of jobs that pay a living wage possible for the residents of the City and the surrounding region. City policy makers and economic development agents must keep the critical need for living wage FTE jobs the priority whenever public dollars are invested in a private business or development project.

**Business Subsidy Public Purpose.** The public purposes of this policy shall be to accomplish the following on behalf of the City of Hawley.

1. Enhance economic growth in this area
2. Create high quality job growth in this area
3. Retain high quality jobs in this area
4. Stabilize the community

This policy is adopted in compliance with M.S. §116J.994 Subd.2. A copy of the policy shall be submitted to the Department of Employment and Economic Development along with the first annual Business Subsidy report.

**Business Subsidy Implementation.** The City of Hawley shall target its business subsidy assistance to businesses that demonstrate a clear and ongoing commitment to the community by providing living wage jobs to their employees and to City residents, where applicable, by giving priority to those businesses over businesses that have not traditionally paid living wages.

The City shall focus its business subsidy assistance only to businesses which agree to comply with annual business subsidy reporting requirements as required by Job Opportunity Building Zone (JOBZ) statute M.S. §§469.310-469.320; and/or as required by the Business Subsidy statute M.S. §§116J.993-116J.995.

Although the primary purpose of this policy is the creation of living wage jobs, we cannot achieve our economic development goals without a trained and ready workforce and adequate childcare. The city shall commit to assist businesses to obtain trained and work-ready employees through the DEED Workforce Development Centers; MNSCU and other services; and to facilitate access to childcare.

#### **I. DEFINITIONS**

“Authorized Business Subsidy Signatory” means the Mayor and the Clerk Treasurer who are authorized by this Policy to execute business subsidy agreements on behalf of the City of Hawley.

**“JOBZ Business Subsidy” means tax exemptions or tax credits available to a qualified business located in a job zone under the Job Opportunity Building Zone (JOBZ) statute M.S. §§469.310-469.320. JOBZ Business Subsidies shall include:**

- 1. Exemption from individual income taxes as provided under M.S. §469.316; and**
- 2. Exemption from corporate franchise taxes as provided under M.S. §469.317; and**
- 3. Exemption from the state sales and use tax and any local sales and use taxes on qualifying purchases as provided in M.S. §297A.68, subdivision 37; and**
- 4. Exemption from the state sales tax on motor vehicles and any local sales tax on motor vehicles as provided under M.S. §297B.03; and**
- 5. Exemption from the property tax as provided in M.S. §272.02, subdivision 64; and**
- 6. Exemption from the wind energy production tax under M.S. §272.029, subdivision 7; and**
- 7. The jobs credit allowed under M.S. § 469.318.**

**“Business Subsidy” means a state or local government agency grant, contribution of personal property, real property, infrastructure, the principal amount of a loan at rates below those commercially available to the recipient, any reduction or deferral of any tax or any fee, any guarantee of any payment under any loan, lease, or other obligation, or any preferential use of government facilities given to a business, and as defined by the Business Subsidy statute M.S. §§116J.993-116J.995. Business subsidies do not include the following:**

- 1. assistance of less than \$25,000;**
- 2. assistance that is generally available to all businesses or to a general class of similar businesses, such as a line of businesses, size, location or similar general criteria;**
- 3. public improvements to buildings or lands owned by the City that serve a public purpose and do not principally benefit a single business or defined group of businesses at the time the improvements are made;**
- 4. property polluted by contaminants being redeveloped as defined in M.S. § 116J.552, subd.3.**
- 5. assistance provided for the sole purpose of renovating old or decaying building stock or bringing it up to code and assistance to designated historic preservation sites or districts, provided that the assistance is equal to or less than 50% of the total cost of the development;**
- 6. assistance to provide job readiness and training services;**
- 7. assistance for housing;**
- 8. assistance for pollution control or abatement, including assistance from a TIF hazardous substances subdistrict;**
- 9. assistance for energy conservation;**
- 10. tax reductions resulting from conformity with federal tax law;**
- 11. workers compensation and unemployment compensation;**
- 12. benefits derived from regulation;**
- 13. indirect benefits derived from assistance to educational institutions;**
- 14. funds from bonds allocated under M.S., Chapter 47A refunding bonds and 501 (c)(3) bonds;**

15. assistance for collaboration between a Minnesota higher education institution and a business;
16. assistance for a tax increment financing soils condition district as defined under M.S. §469.174, subd.19;
17. redevelopment when the Recipients or Qualified Business' investment in the purchase of the site and in site preparation is 70 percent or more of the assessor's current years estimated market value;
18. general changes in tax increment financing law and other general tax law changes of a principally technical nature;
19. federal assistance until the assistance has been repaid to and reinvested by the local governmental unit;
20. funds from dock or wharf bonds issued by a seaway port authority;
21. business loans or loan guarantees of \$75,000 or less; and
22. federal loan funds provided through the U.S. Economic Development Administration.

**"Business Subsidy Report"** means the annual reports submitted each year for each business receiving a business subsidy in the community. The report is submitted by the City in order to comply with M.S. §16J.994 Subd.7.(b).

**"Criteria"** means the equitably applied, uniform standards by which the City bases its decision to award any business subsidy to a private business or development project establishing a business and creating jobs in the City.

**"DEED"** means Minnesota Department of Employment and Economic Development.

**"Economic Development Agent"** means the city department, local or regional economic development agency or other authorized entity that is empowered to solicit, negotiate and form business subsidy agreements on behalf of the City of Hawley. The Economic Development Agents for the City of Hawley shall be the Hawley Economic Development Authority and David Drown of David Drown Associates, hereinafter "Agent".

**"Health Insurance"** means basic health insurance, which shall include employer subsidized individual coverage and/or family coverage.

**"Living Wage Job"** shall mean a job which pays wages and benefits not mandated by law, that on an annualized basis is equal to at least 110% of the federal poverty level for a family of four. For 2005, the minimum shall be \$10.23 per hour. This wage and benefit level shall apply after not more than a 6 month probationary/training period.

**"Qualified Business"** means a person that carries on a trade or business at a place of business located within a Job Opportunity Building Zone as referenced in M.S. §469.310 Subd.11; and complies with the reporting requirements specified by M.S. §469.313 Subd.2.(5); and shall comply with the criteria in Section II.C. of this agreement; and shall also mean "Recipient" as defined by Business Subsidy law. A qualified business shall not include a business that pays less than the living wage defined in this agreement.

**“Recipient”** means any business entity that receives a business subsidy as defined by M.S. §116J.993, and that has signed a Business Subsidy Agreement with a city.

**“Relocating Business”** means a business relocating from another Minnesota non-JOB Zone location.

**“Relocation Agreement”** means a binding written agreement between a relocating qualified business and the commissioner of DEED pledging that the qualified business shall either: (a) increase full-time or full-time equivalent employment in the first full year of operation within the job opportunity building zone by at least 20 percent, *or* (b) make a capital investment on the property equivalent to 10% of the gross revenues of operation that was relocated in the immediately preceding taxable year; and provides for repayment of all tax benefits if the requirements of (a) or (b) are not met.

**“Student Training Job”** shall mean a job provided to a local high school student working less than 32 hours per week and paying at least \$8.00 per hour. To qualify as a student training job, the employer must provide the City with the name of the student trainee and have a training program and plan for the student trainee. A student training job may not be used to satisfy the job creation requirements of a Business Subsidy Agreement.

**“Subzone”** means the parcel or parcel of land designated by the Commissioner of Employment and Economic Development within a Job Opportunity Building Zone within the boundaries of the City of Hawley to receive certain tax credits and exemptions specified under M.S. §469.310-469.320.

**“Zone”** means a Job Opportunity Building Zone or an Agricultural Processing Facility Zone designated by the commissioner of Employment and Economic Development under M.S. §469.314.

## **II. BUSINESS SUBSIDY REQUIREMENTS**

- 1 Any time the City of Hawley provides a business subsidy to a Qualified Business or Recipient, that business is subject to the wage levels, job creation and other criteria set forth in this policy and specified in the Business Subsidy Agreement made with the City. In the event of a conflict between the requirements of the Business Subsidy statute M.S. §§116J.993-116J.995 and the JOBZ statute M.S. §§469.310-469.320, the JOBZ statute shall supersede.
2. The recipient, in the case of a quantifiable non-JOBZ business subsidy, shall create and/or retain for the JOBZ duration a negotiated number of jobs that pay a living wage. These jobs shall be created not later than 24 months after a Business Subsidy Agreement has been executed.
3. The City of Hawley may deviate from wage and job criteria by documenting the reason in writing for the deviation and attaching a copy of this reason to the next annual Business Subsidy Report submitted to DEED.

4. The City of Hawley authorizes the Mayor as its Authorized Business Subsidy Signatory to execute business subsidy agreements on behalf of City.
5. The City of Hawley authorizes the Hawley Economic Development Authority and David Drown of David Drown Associates to act as its Economic Development Agents for purposes of initiating and negotiating Business Subsidy Agreements on its behalf.
6. Requirements of businesses. The City of Hawley shall require all businesses receiving a business subsidy to comply with the following:
  - a) The business shall attend a properly noticed public hearing held by the City of Hawley as provided by M.S. §116J.994, when the value of the subsidy does or is expected to exceed \$100,000 from local sources. The purpose of the hearing shall be held to identify and define the criteria that the qualified business or recipient shall meet in order to be eligible to receive a business subsidy or become a qualified business for purposes of the JOBZ statute. The hearing shall specify the subsidy provided, the public purpose(s) that shall be achieved by offering the subsidy, and shall specify the measurable, specific, and tangible goals committed to by the qualified business. As provided by M.S. §116J.994, Subd.5., a public notice shall be published in print and if possible, on the internet, at least 10 days prior to the hearing, identifying the location, date, time and place of the hearing; and providing information about the business subsidy proposed, including a summary of the terms of the subsidy.
  - b) If the business is qualified to receive JOBZ tax benefits, that business shall agree to continue operations in the City for the duration of the job zone term.
  - c) If the qualified business or recipient is a relocating business under the definition in this agreement, the business shall be required to enter into a binding written "Relocation Agreement between the qualified business and the commissioner of DEED pledging that the qualified relocating business shall:
    - 1) Increase full time equivalent employment by 20% or five (5) jobs, whichever is greater (measured relative to the operations that were relocated) within the first full taxable year of operation within the Zone and maintains the required level of employment during each year of zone designation; or
    - 2) Repay all tax benefits if the requirements are not met.

**RESOLUTION 00 – 42****CITY OF HAWLEY**  
**BUSINESS SUBSIDY CRITERIA****I. Purpose**

This document includes the criteria to be considered by the City of Hawley (“City”) to evaluate requests for business subsidies. It is the intent of the City in adopting these criteria to comply with Minnesota Statutes, Sections 116J.993-116J.995 (the “Act”). The City hereby adopts the definitions contained in the Act for application in the criteria.

**II. Goals and Objectives**

It is the City’s intent to advance the following goals and objectives in granting business subsidies:

- a. All projects must be consistent with Hawley’s comprehensive plan and any other similar plan or guide for development of the community.
- b. Business subsidies must be justified by evidence that the project cannot proceed without the benefit of the subsidy. If tax increment financing is used to grant a subsidy, the grantee must demonstrate compliance with all statutory requirements of the TIF Act, including the “but for” test. The grantee will be required to provide all documentation necessary for the City to make the requisite findings under the TIF Act and the Act.
- c. Grantees will be required to enter into an agreement with the City that is consistent with statutory requirements, including a commitment to remain in business at the site for a minimum of five years after the benefit date, unless the City approves a request by the Grantor to move after holding a public hearing on the matter. In addition, the

Grantor must comply with the specific jobs and wages goals established for the project. All jobs created to meet job and wage goals established for a project must pay at least the minimum wage.

### **III. Business Subsidy Criteria**

The City recognizes that every proposal is unique. Nothing in these criteria shall be deemed to be an entitlement or shall establish a contractual right to a subsidy. The City reserves the right to modify these criteria from time to time and to evaluate each project as a whole. The following criteria shall be utilized in evaluating a request for a business subsidy:

- a. **Increase in tax base.** While an increase in the tax base cannot be the sole grounds for granting a subsidy, the City believes it is a desirable condition for any subsidy.
- b. **Jobs and Wages.** It is the City's intent that the grantee create the maximum number of livable wage jobs at the site. This may include jobs to be retained but only if job retention is imminent and demonstrable.

**Economic Development.** Projects should promote one or more of the following:

1. **Economic and commercial diversity within the community;**
2. **Establishment of a critical mass of commercial development within an area;**
3. **Provision of basic goods and services, an increase in the range of goods and services available, or encouragement of fast-growing businesses;**
4. **Redevelopment objectives and removal of blight, including pollution cleanup;**

5. Retention or adaptive reuse of buildings of historical or architectural significance;
  6. Additional or spin-off development within the community;
  7. Full utilization of existing or planned infrastructure improvements.
- d. Any deviation from these criteria will require a written explanation, a copy of which will be submitted to the Commissioner of the Minnesota Department of Trade and Economic Development.

**IV. Compliance and Reporting Requirements.**

- a. Any subsidy granted by the City will be subject to the requirement of a public hearing, if necessary, and must be approved by the Hawley city council.
- b. It will be necessary for both the grantee and the City to comply with the reporting and monitoring requirements of the Act.

**ATTEST**

/s/Joseph P. Pederson  
JOSEPH PEDERSON  
MAYOR

/s/Lisa Jetvig  
LISA JETVIG  
CLERK TREASURER



## 6.I.993 Definitions

**Subdivision Scope** For the purposes of sections 6J.993 to 116J.995, the term defined in this section have the meanings given them

**Subd Benefit date.** "Benefit date" means the date that the recipient receives the business subsidy the business subsidy involves the purchase lease, donation of physical equipment then the benefit date begins when the recipient puts the equipment into service. If the business subsidy for improvements to property then the benefit date refers to the earliest date of either:

- ( ) when the improvements are finished for the entire project or
- (.) when business occupies the property. If business occupies the property the subsidy grantor expects that other businesses will also occupy the same property the grantor may assign separate benefit date for each business when first occupies the property.

**Subd Business subsidy** "Business subsidy or "subsidy" means state or local government agency grant, contribution of personal property real property infrastructure the principal amount of loan at rates below those commercially available to recipient, any reduction deferral of any tax any fee any guarantee of any payment under an loan lease other obligation or any preferential use of government facilities given to business.

The following forms of financial assistance are not business subsidy

- ( ) business subsidy of less than \$25,000

assistance that is generally available to all businesses to general class of similar businesses such as of business size location or similar general criteria

(3) public improvements to buildings or lands owned by the state or local government that serve public purpose and do not principally benefit single business or defined group of businesses at the time the improvements are made

(4) redevelopment property polluted by contaminants defined in section 116J.552 subdivision

(5) assistance provided for the sole purpose of renovating old decaying building stock bringing it up to code and assistance provided for designated historic preservation districts provided that the assistance is equal to or less than 50 percent of the total cost

(6) assistance to provide job readiness and training services the sole purpose of the assistance is to provide those services

(7) assistance for housing

(8) assistance for pollution control or abatement, including assistance for tax abatement financing hazardous substance subdistrict defined under section 469.174 subdivision

(9) assistance for energy conservation

(10) tax reductions resulting from conformity with federal tax

(11) workers compensation and unemployment insurance

benefits derived from regulation

(13) indirect benefits derived from assistance to educational institutions;

(14) funds from bonds allocated under chapter 474A, bonds issued to refund outstanding bonds, and bonds issued for the benefit of an organization described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended through December 31, 1999;

(15) assistance for a collaboration between a Minnesota higher education institution and a business;

(16) assistance for a tax increment financing soils condition district as defined under section 469.174, subdivision 19;

(17) redevelopment when the recipient's investment in the purchase of the site and in site preparation is 70 percent or more of the assessor's current year's estimated market value;

(18) general changes in tax increment financing law and other general tax law changes of a principally technical nature;

(19) federal assistance until the assistance has been repaid to, and reinvested by the state or local government agency;

(20) funds from dock and wharf bonds issued by a seaway port authority;

(21) business loans and loan guarantees of \$75,000 or less; and

(22) federal loan funds provided through the United States Department of Commerce, Economic Development Administration.

**Subd. 4. Grantor. "Grantor" means any state or local government agency with the authority to grant a business subsidy.**

**Subd. 5. Local government agency. "Local government agency" includes a statutory or home rule charter city, housing and redevelopment authority, town, county, port authority, economic development authority, community development agency, nonprofit entity created by a local government agency, or any other entity created by or authorized by a local government with authority to provide business subsidies.**

**Subd. 6. Recipient. "Recipient" means any for-profit or nonprofit business entity that receives a business subsidy. Only nonprofit entities with at least 100 full-time equivalent positions and with a ratio of highest to lowest paid employee, that exceeds ten to one, determined on the basis of full-time equivalent positions, are included in this definition.**

**Subd. 6a. Residence. "Residence" means the place where an individual has established a permanent home from which the individual has no present intention of moving.**

**Subd. 7. State government agency. "State government agency" means any state agency that has the authority to award business subsidies.**

**116J.994 Regulating local and state business subsidies.**

**Subdivision 1. Public purpose.** A business subsidy must meet a public purpose which may include, but may not be limited to, increasing the tax base. Job retention may only be used as a public purpose in cases where job loss is specific and demonstrable.

**Subd. 2. Developing a set of criteria.** A business subsidy may not be granted until the grantor has adopted criteria after a public hearing for awarding business subsidies that comply with this section. The criteria may not be adopted on a case-by-case basis. The criteria must set specific minimum requirements that recipients must meet in order to be eligible to receive business subsidies. The criteria must include a specific wage floor for the wages to be paid for the jobs created. The wage floor may be stated as a specific dollar amount or may be stated as a formula that will generate a specific dollar amount. A grantor may deviate from its criteria by documenting in writing the reason for the deviation and attaching a copy of the document to its next annual report to the department. The commissioner of employment and economic development may assist local government agencies in developing criteria. A copy of the criteria must be submitted to the Department of Employment and Economic Development along with the first annual report following the enactment of this section or with the first annual report after it has adopted criteria, whichever is earlier.

**Subd. 3. Subsidy agreement.** (a) A recipient must enter into a subsidy agreement with the grantor of the subsidy that includes:

(1) a description of the subsidy, including the amount and type of subsidy, and type of district if the subsidy is tax increment financing;

(2) a statement of the public purposes for the subsidy;

(3) measurable, specific, and tangible goals for the subsidy;

(4) a description of the financial obligation of the recipient if the goals are not met;

(5) a statement of why the subsidy is needed;

(6) a commitment to continue operations in the jurisdiction where the subsidy is used for at least five years after the benefit date;

(7) the name and address of the parent corporation of the recipient, if any; and

(8) a list of all financial assistance by all grantors for the project.

(b) Business subsidies in the form of grants must be structured as forgivable loans. For other types of business subsidies, the agreement must state the fair market value of the subsidy to the recipient, including the value of conveying property at less than a fair market price, or other in-kind benefits to the recipient.

(c) If a business subsidy benefits more than one recipient, the grantor must assign a proportion of the business subsidy to each recipient that signs a subsidy agreement. The proportion assessed to each recipient must reflect a reasonable estimate of the recipient's share of the total benefits of the project.

(d) The state or local government agency and the recipient must both sign the subsidy agreement and, if the grantor is a local government agency, the agreement must be approved by the local elected governing body, except for the St. Paul Port Authority and a seaway port authority.

(e) Notwithstanding the provision in paragraph (a), clause (6), a recipient may be authorized to move from the jurisdiction where the subsidy is used within the five-year period after the benefit date if, after a public hearing, the grantor approves the recipient's request to move. For the purpose of this paragraph, if the grantor is a state government agency other than the Iron Range Resources and Rehabilitation board, "jurisdiction" means a city or township.

Subd. 4. **Wage and job goals.** The subsidy agreement, in addition to any other goals, must include: (1) goals for the number of jobs created, which may include separate goals for the number of part-time or full-time jobs, or, in cases where job loss is specific and demonstrable, goals for the number of jobs retained; (2) wage goals for any jobs created or retained; and (3) wage goals for any jobs to be enhanced through increased wages. After a public hearing, if the creation or retention of jobs is determined not to be a goal, the wage and job goals may be set at zero. The goals for the number of jobs to be created or retained must result in job creation or retention by the recipient within the granting jurisdiction overall.

In addition to other specific goal time frames, the wage and job goals must contain specific goals to be attained within two years of the benefit date.

Subd. 5. **Public notice and hearing.** (a) Before granting a business subsidy that exceeds \$500,000 for a state government grantor and \$100,000 for a local government grantor, the grantor must provide public notice and a hearing on the subsidy. A public hearing and notice under this subdivision is not required if a hearing and notice on the subsidy is otherwise required by law.

(b) Public notice of a proposed business subsidy under this subdivision by a state government grantor, other than the Iron Range Resources and Rehabilitation Board, must be published in the State Register. Public notice of a proposed business subsidy under this subdivision by a local government grantor or the Iron Range Resources and

Rehabilitation Board must be published in a local newspaper of general circulation. The public notice must identify the location at which information about the business subsidy, including a summary of the terms of the subsidy, is available. Published notice should be sufficiently conspicuous in size and placement to distinguish the notice from the surrounding text. The grantor must make the information available in printed paper copies and, if possible, on the Internet. The government agency must provide at least a ten-day notice for the public hearing.

(c) The public notice must include the date, time, and place of the hearing.

(d) The public hearing by a state government grantor other than the Iron Range Resources and rehabilitation Board must be held in St. Paul.

(e) If more than one nonstate grantor provides a business subsidy to the same recipient, the nonstate grantors may designate one nonstate grantor to hold a single public hearing regarding the business subsidies provided by all nonstate grantors. For the purposes of this paragraph, "nonstate grantor" includes the iron range resources and rehabilitation board.

(f) The public notice of any public meeting about a business subsidy agreement, including those required by this subdivision and by subdivision 4, must include notice that a person with residence in or the owner of taxable property in the granting jurisdiction may file a written complaint with the grantor if the grantor fails to comply with sections 116J.993 to 116J.995, and that no action may be filed against the grantor for the failure to comply unless a written complaint is filed.

Subd. 6. Failure to meet goals. The subsidy agreement must specify the recipient's obligation if the recipient does not fulfill the agreement. At a minimum, the agreement must require a recipient failing to meet subsidy agreement goals to pay back the assistance plus interest to the grantor or, at the grantor's option, to the



account created under section 116J.551 provided that repayment may be prorated to reflect partial fulfillment of goals. The interest rate must be set at no less than the implicit price deflator for government consumption expenditures and gross investment for state and local governments prepared by the Bureau of Economic Analysis of the United States Department of Commerce for the 12-month period ending March 31 of the previous year. The grantor, after a public hearing, may extend for up to one year the period for meeting the wage and job goals under subdivision 4 provided in a subsidy agreement. A grantor may extend the period for meeting other goals under subdivision 3, paragraph (a), clause (3), by documenting in writing the reason for the extension and attaching a copy of the document to its next annual report to the department.

A recipient that fails to meet the terms of a subsidy agreement may not receive a business subsidy from any grantor for a period of five years from the date of failure or until a recipient satisfies its repayment obligation under this subdivision, whichever occurs first.

Before a grantor signs a business subsidy agreement, the grantor must check with the compilation and summary report required by this section to determine if the recipient is eligible to receive a business subsidy.

Subd. 7. Reports by recipients to grantors. (a) A business subsidy grantor must monitor the progress by the recipient in achieving agreement goals.

(b) A recipient must provide information regarding goals and results for two years after the benefit date or until the goals are met, whichever is later. If the goals are not met, the recipient must continue to provide information on the subsidy until the subsidy is repaid. The information must be filed on forms developed by the commissioner in cooperation with representatives of local government. Copies of the completed forms must be sent to the local government agency that provided the subsidy or to the commissioner if the grantor is a state agency. If the Iron Range Resources and

Rehabilitation Board is the grantor the copies must be sent to the board The report must include:

the type public purpose and amount of subsidies and type of district if the subsidy is tax increment financing

the hourly wage of each job created with separate bands of wages

(3) the sum of the hourly wages and cost of health insurance provided by the employer with separate bands of wages

4) the date the job and wage goals will be reached;

(5) statement of goals identified in the subsidy agreement and update achievement of those goals

(6) the location of the recipient prior to receiving the business subsidy

(7) the number of employees who ceased to be employed by the recipient when the recipient relocated to become eligible for the business subsidy

(8) why the recipient did not complete the project outlined in the subsidy agreement at their previous location if the recipient was previously located at another site in Minnesota

(9) the name and address of the parent corporation of the recipient, if any

0) list of all financial assistance by all grantors for the project; and

1) other information the commissioner may request

A report must be filed no later than March 1 of each year for the previous year. The local agency and the Iron Range Resources and Rehabilitation Board must forward copies of the reports received by recipients to the commissioner by April 1.

(c) Financial assistance that is excluded from the definition of "business subsidy" by section 116J.993, subdivision 3, clauses (4), (5), (8), and (16), is subject to the reporting requirements of this subdivision, except that the report of the recipient must include instead:

(1) the type, public purpose, and amount of the financial assistance, and type of district if the assistance is tax increment financing;

(2) progress towards meeting goals stated in the assistance agreement and the public purpose of the assistance;

(3) if the agreement includes job creation, the hourly wage of each job created with separate bands of wages;

(4) if the agreement includes job creation, the sum of the hourly wages and cost of health insurance provided by the employer with separate bands of wages;

(5) the location of the recipient prior to receiving the assistance; and

(6) other information the grantor requests.

(d) If the recipient does not submit its report, the local government agency must mail the recipient a warning within one week of the required filing date. If, after 14 days of the postmarked date of the warning, the recipient fails to provide a report, the recipient

must pay to the grantor a penalty of \$100 for each subsequent day until the report is filed. The maximum penalty shall not exceed \$1,000.

Subd. 8. **Reports by grantors.** (a) Local government agencies of a local government with a population of more than 2,500 and state government agencies, regardless of whether or not they have awarded any business subsidies, must file a report by April 1 of each year with the commissioner. Local government agencies of a local government with a population of 2,500 or less are exempt from filing this report if they have not awarded a business subsidy in the past five years. The report must include a list of recipients that did not complete the recipient report required under subdivision 7 and a list of recipients that have not met their job and wage goals within two years and the steps being taken to bring them into compliance or to recoup the subsidy.

If the commissioner has not received the report by April 1 from an entity required to report, the commissioner shall issue a warning to the government agency. If the commissioner has still not received the report by June 1 of that same year from an entity required to report, then that government agency may not award any business subsidies until the report has been filed.

(b) The commissioner of employment and economic development must provide information on reporting requirements to state and local government agencies.

Subd. 9. **Compilation and summary report.** The Department of Employment and Economic Development must publish a compilation and summary of the results of the reports for the previous two calendar years by December 1 of 2004 and every other year thereafter. The reports of the government agencies to the department and the compilation and summary report of the department must be made available to the public. The commissioner must make copies of all business subsidy reports submitted

by local and state granting agencies available on the department's Web site by October 1st of the year in which they were submitted.

The commissioner must coordinate the production of reports that usefully compare business subsidy periods and across grantors can be made. The commissioner may add other information to the report that the commissioner deems necessary to evaluate business subsidies. Among the information in the summary and compilation report the commissioner must include:

(1) total amount of subsidies awarded in each development region of the state

(2) distribution of business subsidy amounts by size of the business subsidy

(3) distribution of business subsidy amounts by time category

(4) distribution of subsidies by type and by public purpose

(5) percent of all business subsidies that reached their goals

(6) percent of business subsidies that did not reach their goals by two years from the benefit date

(7) total dollar amount of business subsidies that did not meet their goals after two years from the benefit date

(8) percent of subsidies that did not meet their goals and that did not receive repayment

(9) list of recipients that have failed to meet the terms of a subsidy agreement in the past five years and have not satisfied their repayment obligations

( 0) number of part-time and full-time jobs within separate bands of wages for the entire state and for each development region of the state

benefits paid within separate bands of wages for the entire state and for each development region of the state and

( 1) number of employees in the entire state and in each development region of the state who ceased to be employed because their employers relocated to become eligible for business subsidy

bd 0. **Compilation.** The Department of Employment and Economic Development must publish a compilation of granting agencies' criteria/policies adopted in the previous two calendar years by December 1 of 2004 and every other year thereafter.

Subd 0. **Enforcement.** a) A person with residence in or an owner of taxable property located in the jurisdiction of the grantor may bring an action for equitable relief arising out of the failure of the grantor to comply with sections 116J.993 to 116J.995. The court may award prevailing party in an action under this subdivision costs and reasonable attorney fees.

(b) Prior to bringing an action, the party must file a written complaint with the grantor stating the alleged violation and proposing a remedy. The grantor has up to 30 days to reply to the complaint in writing and may take action to comply with sections 116J.993 to 116J.995.

c) The written complaint under this subdivision for failure to comply with subdivisions 1 to 3 must be filed with the grantor within 80 days after approval of the subsidy agreement under subdivision 1, paragraph (d). An action under this

subdivision must be commenced within 30 days following receipt of the grantor's reply, or within 180 days after approval of the subsidy agreement under subdivision 3, paragraph (d), whichever is later.

#### **116J.995 Economic grants.**

An appropriation rider in an appropriation to the Department of Employment and Economic Development that specifies that the appropriation be granted to a particular business or class of businesses must contain a statement of the expected benefits associated with the grant. At a minimum, the statement must include goals for the number of jobs created or enhanced, wages paid, and the tax revenue increases due to the grant. The wage and job goals must contain specific goals to be attained within two years of the benefit date. The statement must specify the recipient's obligation if the recipient does not attain the goals. At a minimum, the statement must require a recipient failing to meet the job and wage goals to pay back the assistance plus interest to the Department of Employment and

Economic Development provided that repayment may be prorated to reflect partial fulfillment of goals. The interest rate must be set at no less than the implicit price deflator as defined under section 116J.994, subdivision 6. The legislature, after a public hearing, may extend for up to one year the period for meeting the goals provided in the statement.

## **WHAT YOU NEED TO KNOW ABOUT BUSINESS SUBSIDIES**

**Kennedy & Graven**

### **1. Some History.**

First enacted in 1995: a bare-bones statute that required job and wage goals when government provides “assistance for economic development or job growth purposes.”

- Outgrowth of a long debate over how state and local government administer and monitor public assistance for development and redevelopment.
- The original act was repealed in 1999 and replaced with Minnesota Statutes, Sections 116J.993 to 116J.995 (the “Act”).  
Amendments in 2000 revive the 1995 law for assistance provided between July 1, 1995 and July 31, 1999.

### **2. What is a business subsidy?**

- A business subsidy is almost any special benefit given by state or local government (known as a “grantor”) to a profit or nonprofit entity (known as a “recipient”).
- If the recipient is a nonprofit, the Act applies only if the entity has at least 100 full time equivalent employees and the ratio of highest to lowest paid employees is at least 10 to 1 (which means most nonprofits are excluded other than large hospitals and nursing homes).
- Includes grants, contributions of property, infrastructure, the principal amount of loans at rates below market, reduction or deferral of fees or taxes, guarantees of loans or leases, and preferential use of government facilities.  
There are 22 exceptions, for situations where assistance is not considered a “business subsidy” under the Act. The most significant exceptions are:

- Subsidies under \$25,000.
- Business loans of \$75,000 or less.
- Public improvements that do not benefit a single business or defined group of businesses at the time the improvement is made.
- Assistance for pollution control.
- Assistance for housing.
- Assistance for redevelopment under certain conditions
- Conduit bonds.



### 3. Business Subsidy Policies.

Grantors must have adopted a set of criteria (after a public hearing) before any subsidy can be granted.

Under the 1999 law, there were no requirements about what the policies contain, except a mandatory statement about wage levels.

- Under the 2000 law, policies must be specific (i.e. a statement that subsidies will be granted on a case-by-case basis is not enough), and must set specific wage floors. If grantors had policies in place under the prior law by May 1, 2000, they have until May 1, 2003 to update them in accordance with the new requirements.
- A grantor can deviate from the policies, but must file a statement with DTED.
- Policies must set wage floors, but the policies may also recognize that job creation/retention is not always the public purpose-if other purposes are named (above and beyond tax base increase), job requirements need not be imposed.

### 4. How Subsidies are awarded.

The grantor must hold a public hearing if the subsidy is over \$100,000 or if the grantor designates a public purpose other than job creation/retention.

- The grantor must enter into a "business subsidy agreement" with the recipient. The agreement must be approved by the *local elected governing body* even if the grantor is a different body (such as an economic development authority).
- The agreement must contain certain required items. The most significant ones are:
  - Must state "measurable, specific and tangible goals" for the subsidy.
  - Recipient must agree to continue operations for at least 5 years (can be waived after public hearing).
  - If jobs and wage goals are set, they must be met within 2 years after the benefit date.
  - If no jobs and wage goals are set, there must be other specific goals.
  - If recipient fails to meet the job or other specified goals, all assistance must be repaid with interest. Deadline for job goals can be extended for up to 1 year with a public hearing; deadline for other goals can be extended indefinitely without a hearing if an explanation is filed with DTED.

The recipient must file annual reports by March 1, with \$100/day penalty for failure to comply (\$1,000 maximum).

- Grantor must file annual reports with DTED; if not filed, grantor barred from granting further business subsidies until reports are in.